

From: Mia, Marcia

Sent: Monday, April 08, 2019 03:07 PM

To: Scinta, Robert; Segall, Martha; Duffy, Rick; Lischinsky, Robert; Apple Chapman; Sorrell, Virginia

Subject: FW: Inside EPA Coverage of EDF/SGC White Paper

FYI re: NSPS 0000a.

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From: Lia Parisien <lparisien@ecos.org>

Sent: Monday, April 08, 2019 8:24 AM

To: Lia Parisien <lparisien@ecos.org>

Subject: Inside EPA Coverage of EDF/SGC White Paper

States, Environmentalists Back 'Alternative Compliance' In Methane Rules

April 05, 2019

State environmental commissioners are joining environmentalists to urge EPA and state governments to bolster the use of "alternative compliance" provisions in their rules limiting methane releases from oil and gas operations, a step they argue could ease industry costs while still delivering equivalent emissions cuts.

The Environmental Defense Fund (EDF) and the Environmental Council of the States (ECOS) issued a joint April 4 report that calls for novel compliance flexibilities that go beyond the traditional leak detection and repair (LDAR) programs in current rules -- underscoring the pressure EPA faces to retain oil and gas methane standards, including an emerging split on the subject within the sector.

Even though small operators have backed the White House's expected move to scrap Obama-era limits, larger firms are increasingly calling for it to retain some type of regulation on new sources and eventually regulate existing sources. This has spurred a new call from a former top Obama EPA air official for them to take more concrete action by joining ongoing litigation that claims EPA has a mandatory Clean Air Act duty to craft those rules.

Amid the jockeying over EPA's rules, EDF and ECOS say in their new report that federal and state regulators should develop bolstered requirements in their oil and gas methane rules allowing for "alternative compliance" using new LDAR methods, which could include continuous monitoring or emerging technologies like laser-based emissions detection.

"There is uncommonly strong agreement among environmentalists, regulators, innovators, and operators that alternative compliance pathways are needed," the April 4 report argues, noting the potential for improved technology that can achieve regulatory goals quicker and at lower cost.

The report comes as ECOS is preparing for its spring conference April 8-10 in Arlington, VA, with an agenda that features agency Administrator Andrew Wheeler as a keynote speaker as well as a meeting of the group's Shale Gas Caucus that worked with EDF on the new recommendations.

EDF and ECOS note that EPA's current new source performance standards (NSPS) rule has an alternative compliance provision, as do similar rules developed by Colorado. However, programs in states such as Pennsylvania, Wyoming, Ohio and California do not have an "express" pathway for allowing alternatives, even though some of the states are open to the concept.

Trump officials are advancing a proposal that would weaken the nationwide NSPS that EPA issued in 2016, and the agency has been expected to issue a follow-on proposal that would float dropping direct methane requirements altogether in favor of an approach that regulates only smog-forming pollutants and achieves methane cuts indirectly.

However, environmentalists and Democratic-led states are claiming in court that EPA has no choice but to regulate methane emissions from existing sources, and the EDF-ECOS report represents a new effort to detail what the end result of a decision in their favor might look like.

Emerging Technologies

The current standards are based on semi-annual inspections using either an optical gas imaging camera or so-called Method 21 device -- though the Trump proposal would require less frequent inspections, among other provisions.

By contrast, EDF and ECOS cite emerging technologies such as lasers or mobile equipment, which could be deployed continuously at one location or frequently across a broad area. However, the report adds, it is difficult to compare the expected methane cuts "from very different types of technologies and leak detection methods."

The groups add that some consider EPA and Colorado's pathway for approving alternative compliance to be "too uncertain and slow."

As such, they are urging the agencies to adopt the same model that industry can use to justify an alternative compliance option, while also ensuring a "transparent and rapid" approval process. They also urge states and EPA to work together in order to limit the work that an operator must do to use an alternative technology in multiple jurisdictions.

EDF and ECOS note that the effort could benefit regulators as well because they could "take advantage" of new technologies such as continuous monitoring to receive much more data and improve their rules.

Meanwhile, former Obama EPA air attorney Joseph Goffman, now director of Harvard University's environmental law program, wrote an April 4 op-ed in the Houston Chronicle, where he seizes on major oil and gas companies' public support for direct methane limits in the sector and urges them to join a lawsuit brought by states and environmentalists seeking to compel Trump officials to regulate existing drilling equipment.

Goffman argues that BP America and firms that have backed methane rules verbally "can do something far more consequential than issuing statements and taking voluntary actions," namely adding themselves as plaintiffs or amici in the state and environmentalist lawsuit seeking Clean Air Act methane standards for existing sources.

"Engaging in this lawsuit as a party is the single most effective action BP can take to achieve regulation of methane emissions from existing oil and gas operations," he writes, along with co-author Hana Veselka Vizcarra, an attorney with Harvard's environmental law program.

In addition to BP, the world's two largest oil and gas companies -- ExxonMobil and Royal Dutch Shell -- in recent weeks have come out in support of EPA regulating methane from both new and existing sources in the sector. Shell, for instance, recently said that it and the oil sector's main trade group, the American Petroleum Institute, "both support reforming, not repealing," the agency's methane rules.

A key implication of dropping direct methane standards in the NSPS is that it would remove a legal requirement for EPA to eventually craft methane rules for existing oil and gas equipment.

Despite this requirement, EPA officials early in the Trump administration scrapped an Obama-era request for industry data that was intended to inform existing source rules. That spurred a New York-led coalition of states and environmental groups to file suit in the U.S. District Court for the District of Columbia seeking to force such rules. The court has scheduled an April 12 status conference in that case. -- Lee Logan (llogan@iwpnews.com)